HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.348 of 2006

Between:

Collector & District Magistrate,

Prakasam District at Ongole and others … Petitioners

And

K.Bhaskar Rao and another … Respondents

::ORDER::

Counsel for the petitioner: The Advocate General

Counsel for respondent No.1: Sri B. Adinarayana Rao

Counsel for respondent No.2: None.

March 18, 2006

Per G.S. Singhvi, CJ

Transfer of an employee from one place to the other or from one post to the other

within the cadre has been often described as an incidence of service. The Courts have repeatedly held that in matters involving challenge to the orders of transfer, the power of judicial review should be exercised with restraint and circumspection. The employer's prerogative to transfer an employee should be tampered with by judicial process only if it shown that the concerned authority has acted in violation of some statutory provision or its action is patently arbitrary or is vitiated due to mala fides. Mere violation of the guidelines, policy decisions or executive instructions issued by the Government for regulating transfer of the employees does not justify court's interdiction in the matter unless such violation is coupled with evidence of mala fide exercise of power (See **B.Varadha Rao v. State of Karnataka**, **Shilpi Bose v. State of Bihar**, **Bank of India v. Jagjit Singh Mehta**, **M.Sankaranarayanan, IAS v. State of Karnataka**, **Rajendra Roy v. Union of India**, **Union of India v. S.L. Abbas**, **Chief General Manager (Telecom) v. Rajendra Ch. Bhattacharjee**, **State of M.P. v. S.S.Kourav**, **Union of India and others v. Ganesh Dass Singh**, **Abani Kanta Ray v. State of Orissa**, **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan and another**, **Union of India v. Janardhan Debnath**, **State of U.P. v. Siya Ram** and **J.K.Bansal v. Union of India**).

It is also to be remembered that allegations of mala fides are often made, but are scarcely proved. The burden to prove the charge of malus animus in the exercise of executive power of the State is always on the person who makes the allegations. Graver are the allegations heavier is the burden. This mantra is discernible from the Constitution Bench judgment of the Supreme Court in **E.P.Royappa v. State of T.N.**

We have prefaced the disposal of this petition, which has been placed before this Bench in furtherance of orders dated 23-2-2006 and 28-2-2006 passed by the III Division Bench with the above observations because after perusing the record and hearing the learned counsel for the parties, we are convinced that Andhra Pradesh Administrative Tribunal (for short 'the Tribunal') gravely erred in nullifying the transfer of respondent No.1, K.Bhaskara Rao, who is holding the post of Mandal Revenue Officer from Chimakurthi to Komarole.

Respondent No.1 is employed in the Revenue Department of Government of Andhra Pradesh. On 9.6.2004, he joined as Mandal Revenue Officer, Chimakurthy. While working at Chimakurthy, respondent No.1 is said to have committed several irregularities in the matter of issue of no objection certificates with respect to mines and government lands. He is also said to have issued pattas in violation of the

instructions issued by the State Government. On coming to know of these irregularities and with a view to safeguard government properties, Collector and District Magistrate, Prasakam issued order dated 11.3.2005 for transfer and posting of respondent No.1 as Mandal Revenue Officer, Komarole. Simultaneously, he appointed Joint Collector, Ongole to enquire into the complaints received against respondent No.1. The latter submitted report with the following findings:-

"a) The respondent has issued 3 NOCs in S.No.162 of R.L. Puram to an extent of Ac.25.00 in Vagu Poramboke without clearance from Irrigation Department which is mandatory under Rule 9(ii) of the A.P. Minor Mineral Concession Rules, 1966, without clearance from Collector, since the clearance is essential as Vagu Poramboke is a water body and attract the ban imposed by the Government in Memo. No.24150/Assn.I(1)/2003-3, dated 22.8.2003.

b. The respondent issued NOC in S.No.101 of Budawada village to an extent of Ac.1.34 in Vagu Poramboke without clearance from Irrigation Department which is mandatory under Rule 9 (ii) of the A.P. Minor Mineral Concession Rules, 1966, without clearance from Collector, since the clearance is essential as Vagu Poramboke is a water body and attract the ban imposed by the Govt. Memo.No.24150/Assn.I(1)/ 2003-3, dated 22.8.2003.

c. The respondent issued NOC in S.No.163 of R.L. Puram village for an extent of Ac.10.00 which is classified as Vagu Poramboke land without obtaining clearance from the Collector which is contrary to Collector's circular instructions issued in reference No.Rc.E1/3441/2003, dated 31.1.2004.

d. The respondent issued NOC in S.no.558, 559, 569 of Chimakurthy village for an extent of Ac.2.94 which is classified as Kunta Poramboke without clearance from Irrigation Department which is mandatory under Rule 9(ii) of the A.P. Minor Mineral Concession Rules, 1966, without clearance from Collector, since the clearance is essential as Kunta Poramboke land is a water body and attract the ban imposed by the Government in Memo.No.24150/Assn.I(1)/2003-3, dated 22-8-2003.

e. The respondent issued NOC in S.No.111/1 of R.L. Puram village to an extent of Ac.2.67 which is classified as Kalibata poramboke vested with the Gram Panchayat without obtaining consent of the Gram Panchayat.

f. The respondent issued 5 NOCs in Budawada, Chimakurthy and R.L. Puram villages for an extent of Ac.9.27 without obtaining clearance from the Collector which is contrary to the instructions of the Collector issued in reference No.Rc.E1/3441/2003, dated 31.1.2004.

g. He issued 3 NOCs in R.L.Puram village for an extent of Ac.8.62 without obtaining clearance from the Collector which is contrary to the instructions of the Collector issued in reference No.Rc.E1/3441/2003, dated 31.1.2004."

By taking cognizance of the aforementioned findings, the competent authority initiated disciplinary enquiry against respondent No.1 under the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

In the meanwhile, respondent No.1 filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') questioning his transfer from Chimakurthy to Komarole on the ground that the action taken by the Collector is vitiated due to violation of the procedures laid down in G.O.Ms.No.16, Finance (W & M) Department, dated 25.1.2005.

In the counter affidavit filed on behalf of the non-applicants (petitioners herein), it was pleaded that transfer of the applicant (respondent No.1 herein) was effected on administrative grounds and in public interest. It was further pleaded that while working as Mandal Revenue Officer, Chimakurthy, the applicant had committed several irregularities in the matter of issuing NOCs and after verifying the complaints the competent authority transferred him to Komarole.

The Tribunal referred to G.O.Ms.No.16, dated 25.1.2005, order dated 11.3.2005 passed in O.A.No.463 of 2005 with M.A. No.305 of 2005 and nullified the transfer of the applicant by observing that the same had been issued without following the procedure prescribed in G.O.Ms.No.16. The relevant extracts of the order of the Tribunal are re-produced below:

> "No doubt, the transfer which is ordinarily done in the public interest or on administrative grounds, should not be interfered with. But the Government having considered all the factors have issued certain guidelines for effecting transfers, in case where it is inevitable. One of the exceptions where the transfers can be effected by following the procedure is on the ground of disciplinary proceedings. The said ground is existing in the present O.A. The Government has clearly stated that in such transfer, where disciplinary case is involved, the orders of the Chief Minister, by following the procedure by circulating the file through various Ministers, orders can be issued. Such exercise is not done in the present case. When the Government has issued certain order, which is followed in some cases and which is not followed in other cases, it is to be

considered that such an act where such instructions are not followed is arbitrary and the 1st respondent in this regard has thrown the instructions to winds. The Tribunal has already taken a view in this regard that such a transfer, which is in violation of G.O.Ms.No.16, dated 26.01.2005, is bad in law and when the Tribunal's order was carried to the Hon'ble High Court in W.P.No.5126/05, the same was not found fault with by the Hon'ble High Court and upheld the said order. Subject matter of this O.A. is identical to the above O.A. In this case also, impugned orders have been issued after the orders are issued in G.O.Ms.No.16, dated 25.01.2005, therefore, it is to be held that transfer in Proceedings in Rc.A1/1138/2005-1,dated 11.03.2005, is bad in law and cannot be upheld."

We have heard the learned Advocate General appearing for the petitioners and Sri B. Adinarayana Rao, Advocate appearing for respondent No.1. In our opinion, the order of the Tribunal is liable to be set aside because the view expressed by the learned Administrative Member of the Tribunal runs contrary to the law laid down by the Supreme Court. It appears to us that attention of the learned Member of the Tribunal was not drawn to the judgments of the Supreme Court in **Shilpi Bose v. State of Bihar** (supra) and **Union of India v. S.L. Abbas** (supra) wherein it has been held that an order of transfer cannot be nullified on the ground of violation of the administrative instructions or policy guidelines.

In **Shilpi Bose v. State of Bihar** (supra), the Supreme Court considered whether transfer of an employee made on his/her own request can be nullified on the ground of violation of the policy framed by the Government. The Patna High Court quashed the order of transfer on the ground that the same was contrary to the guidelines framed by the Government. While reversing the judgment of the High Court, the Supreme Court observed as under:-

"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party

should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

In **Union of India v. S.L.Abbas** (supra), the Supreme Court reiterated the same view and held:-

"6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that the order of his transfer is vitiated by mala fides on the part of the authority making the order, — though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the

> Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A. (We find it all the more surprising that the learned Single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction.) The Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority).

In the present case, we find that respondent No.1 had questioned the order of transfer only on the ground of violation of the guidelines contained in G.O.Ms.No. 16. He neither alleged mala fides against the Collector and District Magistrate nor any evidence was produced to show that the officer concerned had acted with an ulterior motive. The assertion made by respondent No. 1 that the order of transfer had been passed at the instance of local Member of Legislative Assembly was not substantiated by any tangible evidence. The Tribunal too did not go into the issue of mala fide exercise of power. It annulled the order of transfer on the sole ground of violation of the policy contained in G.O.Ms.No.16, dated 25.1.2005 which, in our opinion, is clearly impermissible in view of the law laid down by the Supreme Court.

For the reasons stated above, the writ petition is allowed. The order of the Tribunal is set aside. As a consequence, the Original Application filed by respondent No.1 before the Tribunal shall stand dismissed.

While disposing of the writ petition in the manner indicated above, we deem it proper to mention that reference made in order dated 23.2.2006 passed by III Division Bench suggesting that the report of the Joint Collector contained an aspersion on the integrity of the Member of Legislative Assembly from Chimakurthy, which was later on clarified by order dated 28.2.2006 as a reference to M.L.A. of Santhanutalapadu was, in fact, an error committed by the Joint Collector, who was directed to make enquiry into the allegations levelled against respondent No.1. What the Joint Collector intended was to reproduce the statement made by respondent No.1. Learned Advocate General invited our attention to the statement made by respondent No.1 (page 127 of the paper book) to show that it was the said respondent who had made suggestive allegation against the M.L.A. It appears to us

that the Joint Collector had casually made a note suggesting that in his opinion, the concerned Member of Legislative Assembly had demanded money from respondent No.1. As a matter of fact, this was the assertion made by respondent No.1. Therefore, nothing turns out on the suggestive allegation contained in the report of the Joint Collector and we do not find any valid ground to take further action in that regard.

Before parting with the case, we also deem it proper to take cognizance of another fact namely, that respondent No.1 had been suspended during the pendency of enquiry, but was reinstated after filing of the writ petition. At this stage, we do not want to express any opinion on the merits of the charges levelled against respondent No.1, but cannot resist the temptation of observing that they are extremely serious and, if found proved, major penalty of dismissal or removal from service may have to be imposed on him. It would, therefore, be in the fitness of things that the competent authority should reconsider the issue of reinstatement and take appropriate measures so that the peoples' confidence in the system of administration is not eroded.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

March 18, 2006

SVS/ARS